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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,467	10/28/2003	John R. Sciandra	23368	5616
24932 7590 02/08/2007 LAUBSCHER & LAUBSCHER, P.C. 1160 SPA ROAD SUITE 2B ANNAPOLIS, MD 21403			EXAMINER NEURAUTER, GEORGE C	
			ART UNIT 2143	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS		MAIL DATE 02/08/2007	DELIVERY MODE PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/695,467

Applicant(s)

SCIANDRA ET AL.

Examiner

George C. Neurauter, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-12 and 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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#### **DETAILED ACTION**

Claims 1-6, 8-12, and 14-16 are currently presented and have been examined.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-6, 8-12, and 14-16 have been considered but are moot in view of the new ground(s) of rejection.

The Applicant has attempted to amend the claims to distinguish the claimed invention over the teachings of Johnston and Shorter. However, the Applicant has failed to specifically point to the specification to show the support for the amendments made to the claims. Therefore, the Examiner will rely on the express teachings of the specification in order to determine whether the claims have proper 35 USC 112 support. The Examiner respectfully submits that, in view of the specification, the amendments do not have proper 35 USC 112 support. The replacement of "virtual machine" with "virtual machine slots" has introduced many issues with respect to written description and enablement compliance under 35 USC 112. For example, the amendments made regarding the "receiving client requests for allocation of virtual machine slots" are not supported by the specification in view of paragraphs 0011 and 0013 of the specification. Similarly, there appears to be no

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support for the limitations "assigning virtual machine slots to clients" and "a file repository of requested virtual machine slots". Further, as a matter of interpretation, the specification does not specifically define what a "slot" is.

Therefore, the Examiner finds that the amended claims do not have proper 35 USC 112 support. If the Applicant traverses the Examiner's findings, the Applicant is requested to specifically point out where within the specification the amendments made to the claims have proper support. The Applicant is also requested to show the definition of a "slot" in order for the limitation to not be interpreted by its ordinary and customary plain meaning as required by MPEP 2111.01 in order for its to be given a meaning that is different from its plain meaning.

It is also noted that the Examiner has withdrawn the rejection under Johnston and Shorter due to the amendments made to the claims, however, the Examiner has not introduced a new prior art rejection due to the 35 USC 112 issues at hand. In view of the Applicant's arguments, the Examiner invites the Applicant to consider previously cited reference US Patent Applicant Publication 2003/0088604 A1 to Kuck et al.

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***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35

U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6, 8-12, and 14-16 are rejected under 35

U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

An objective standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the

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invention, in that context, is whatever is now claimed. See also MPEP 2163.02.

The specification does not convey with reasonable clarity that the Applicant was in possession of the claimed limitations of "receiving client requests for allocation of virtual machine slots", "assigning virtual machine slots to clients" and "a file repository of requested virtual machine slots". Also, these limitations do not clearly allow persons of ordinary skill in the art to recognize that the Applicant has invented what is claimed. Therefore, the claims fail to comply with the written description requirement under 35 USC 112, 1<sup>st</sup> paragraph.

Claims 1-6, 8-12, and 14-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims recite "receiving client requests for allocation of virtual machine slots", "assigning virtual machine slots to clients" and "a file repository of requested virtual machine slots" which are not described in the specification in order for one of ordinary skill in the art to make and/or use the

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invention. Therefore, the claims fail to comply with the enablement requirement under 35 USC 112, 1<sup>st</sup> paragraph.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

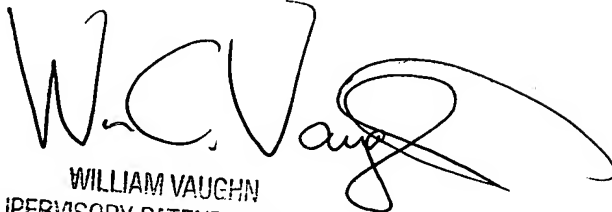
Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is 571-272-3918. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/gcn/

  
WILLIAM VAUGHN  
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